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MITCHELL COMMUNICATIONS CORP.

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January 6, 1995

The Office of:
William F. Caton
Acting Secretary
Federal Communications Commission
Washington D.C. 20554

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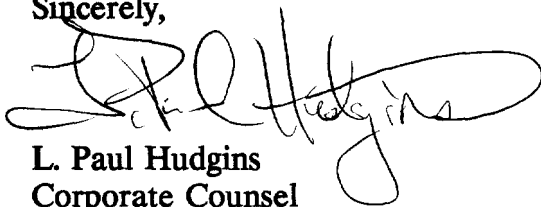
**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Dear Sir or Mesdames:

Enclosed please find the original, plus 9 copies for service, for filing **COMMENTS OF MITCHELL COMMUNICATIONS CORP. TO NOTICE OF PROPOSED RULEMAKING IN MM DOCKET NO. 94-131, PP NO. 93-253, FCC 94-293.**

Please call if you have any questions.

Sincerely,



L. Paul Hudgins
Corporate Counsel

LPH:tgn

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 94-293

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In the Matter of)
)
Amendment of Parts 21 and 74 of the)
Commission's Rules With Regard to)
Filing Procedures in the Multipoint)
Distribution Service and in the)
Instructional Television Fixed Service)
)
and)
)
Implementation of Section 309(j) of the)
Communications Act - Competitive Bidding)

MM Docket No. 94-131

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PP Docket No. 93-253

COMMENTS OF MITCHELL COMMUNICATIONS CORP.
TO NOTICE OF PROPOSED RULEMAKING IN
MM DOCKET NO. 94-131, PP NO 93-253, FCC 94-293

Mitchell Communications Corp. ("Mitchell") is a "Wireless Cable" operator with systems both on the air and under construction in cities around the country. Mitchell is also a lessee of Multipoint Distribution services (MDS) channels in several locations, leases channels in this service from other Commission licensees, and leases excess air time from several Instructional Television Fixed Service (ITFS) licensees. Based on its experience in the Wireless Cable industry, Mitchell respectfully submits the following comments on the above captioned Notice of *Proposed Rulemaking*.

1. This document purports to have the objective of streamlining the procedures for filing and administering MDS (collective term for "wireless cable") applications, at a time when literally thousands of applications are pending, awaiting Commission action or under review of petitions for reconsideration for disagreements with Commission actions in rejecting the applications, in many instances because they were speculative -e.g., filed in great numbers for individual markets.

In actuality, the Commission has followed up previous statements of intent by now setting up a scenario where Commission-created and -determined, mutually exclusive markets, are subjected to competitive bidding (auctions) after a massive return of existing applications and dismissal of petitions for reconsideration - a move which serves 2 purposes for the Commission at the expense of the individual business entity.

- Sweeps previous problems - either caused or exacerbated by the Commission - "under the rug."
- Imposes auctions, in a way to maximize Federal revenue by:
 - a) Putting previously applied market areas back into unserved area pools, and thus available for auction.
 - b) Using interference criteria for new filings - in lieu of 50-mile spacing - a move which many applicants had sought in the pre-freeze situation due to its rational and technical merit; and, which resulted in many disagreements with the Commission and resulted in the return of most of such applications, particularly if multiple filings were involved. This step by the Commission will result in a greater number of markets available for auction, and greater Federal revenue.
 - c) By determining the MDS market area beforehand, the FCC presupposes, and imposes, the auction process.
 - d) Since 1983, a span of a dozen years, the applicants have demonstrated the American ingenuity, resourcefulness and courage to locate, engineer and file for specific markets of their choosing, base upon economic viability and meeting of market needs. (Speculator actions is one price which such a free enterprise system sometimes has to pay - it doesn't invalidate such a system).

The real justification for the imposition of the auction process and maximizing the mutual exclusive scenario is stated clearly in paragraph 5 of the *Proposed Rulemaking* - because the Commission has the power.

2) It seems unfair to make such gross changes to the basic philosophy under which wireless cable was conceived over 12 years ago, despite the number of refinements and changes in channel availability, band usages, etc., MDS is not a new and emerging field, as in the case of PCS or IVDS, and more confusion and conflicts could result from gross changes in procedures and acceptance criteria.

3) It should be possible to get MDS back on track, using all the essential elements originally prescribed, and still use the auction process when appropriate, without imposing the auction process.

For example, if the National Filing window approach of paragraph 12 on page 8 were followed, the applicant could file on markets analyzed and selected by himself, and determined to be economically viable. At the present time, the speculators have pretty much been exposed and the serious players identified. To further insure this fact, the

licensing could be restricted at the outset by limiting applications to existing licensees and/or operators, or requiring applicants to submit qualifications data along with their applications.

4) The technical criteria described in paragraphs 15 and 16 of the *Proposed Rulemaking* are logical, fair and generally accepted models and methods. These formulas and criteria relate appropriately the received power, free space loss and interference parameters, and assume isotropic (omnidirectional) transmitting patterns. For consistency with the criteria used previously, these criteria should be retained and used in the future.

Proper attention should be given to the reasons for inclusion of technical data and equipment information in the presentation of long form applications. This information is essential for applicants in their interference analyses to prove the technical feasibility of their approach and design in applying for new markets. Failure to make this data available will only make the process longer and delay even further the development of MDS for unserved areas.

5) The idea of predetermining service areas for auction in descending order of population is misleading, presumptuous and would likely overlook unserved areas which a dedicated, serious MDS applicant would locate using his/her own resources. This part of paragraph 8 is not acceptable; and as stated earlier, the use of the National Filing Window is recommended, allowing the applicants to locate and file for their own markets.

6) The other aspects which should be retained for reasons of technical rationality and consistency are:

- 15 mile radius protected service area
- while not a requirement, signal contour maps should be encouraged to prove interference free operation, terrain blockage, etc., which enhance the acceptability for new applications, particularly as rural or unserved areas are shoe-horned into areas of adjacent markets.

7) As stated earlier, the condition for imposing mutual exclusivity should not be used, wherein the FCC determines the market areas to be filed. However, when mutually exclusive applications result from the National Window approach, the auction process will replace the lottery.

8) It will take up Commission resources to determine markets to be filed, and efforts best left to the applicants who can take the time to analyze technical, market, demographic, competition and economic factors related to markets they choose to pursue. Should the FCC determine the market areas, an optimum choice may not result. And further, it is possible that applications for markets chosen by the FCC could be awarded for areas for which previous applications were returned, thus raising the likelihood for litigation.

9) The Commission should be assisting serious players to build out systems as a way to get MDS off the ground. Emphasis needs to be placed on this vital area before attention is directed to future applications. As more existing markets (or near markets) are developed, confidence and interest in MDS will be reestablished, thus creating more MDS activity, regardless of the approach employed.

10) With respect to the designation of MSA/RSA/ADI approach as designated areas for MDS filings, it is entirely too late to consider such a procedure, as there have been hundreds of applications accepted and licenses granted using the one filing per MSA and related criteria.

However, it should be noted, that, for the largest MSAs, it is possible to install more than a single MDS system, if the interference criteria of paragraph 12 of the *Proposed Rulemaking* are used and more than one market per MSA allowed. It should therefore be acceptable to allow more than one MDS operator in a given large MSA, provided all other technical requirements are met, and compatible operation is assured.

11) With the exception of the foregoing, the criteria of 45dB and 0 dB C/I for co-channel and adjacent channel interference, respectively, should be used, as it will result in optimal coverage of MDS, result in superior availability for all unserved areas, compatible operation, and maximize the competition to wired cable.

In summary, the FCC does not have a paper problem, but rather one of either resources or resolve, or both.

The use of auctions to resolve mutually exclusive applications for a particular market to replace lotteries is acceptable; however, the imposition of such situations, 12 years after initiation of the multichannel MDS service is self-serving on the part of the Commission and will create more problems than it solves.

12) As far as the competitive bidding process is concerned, it is recommended that sealed bids or "blind bidding" be used, in lieu of continuous bidding, to ensure that small businesses and minorities have a fair chance of realizing a share in the wireless cable field.

Regardless of the extent to which the auction process and the other points mentioned in the referenced NPRM are invoked, these actions should not be undertaken until all actions related to previously filed applications are resolved in a fair and impartial manner, out of respect for the legitimate, initial applicants, many of which are MDS operators trying to attain sufficient channels to obtain a viable system, financing, or both.

13) In closing, Mitchell respectfully requests that the Commission recognize the above proposals and dramatic operational differences between large and small cities and not specify all its rules on the basis of the large metropolitan markets. Wireless cable can bring an important and badly needed service to small town America. In fact, the economy of

delivering multichannel television service by radio gives wireless cable the ability to bring superior service to many areas underserved or unserved by coaxial cable. The Commission's Rules should accommodate this potential as much as possible by adopting procedures that are simple, inexpensive, expeditious and flexible.

Respectfully submitted this 9th day of January, 1995.

MITCHELL COMMUNICATIONS CORP.

By: 

L. Paul Hudgins, Corporate Counsel
GA Bar No. 374135

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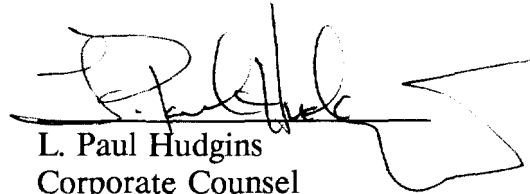
(404) 913-9793 fax

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing document, **COMMENTS OF MITCHELL COMMUNICATIONS CORP. TO NOTICE OF PROPOSED RULEMAKING IN MM DOCKET NO. 94-131, PP NO 93-253, FCC 94-293**, either by hand delivery or by placing true copies of same in the United States Mail with adequate postage affixed thereto.

This 9th day of JANUARY, 1995.

MITCHELL COMMUNICATIONS CORP.



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